

## SECTION 20 - NOTIFICATIONS AND HEARINGS

### A. Idaho Code 58-1305 Permits (Generally Single-family and two-family docks within the line of navigation)

#### Adjacent Owners

Adjacent littoral property owners of a proposed encroachment shall always be notified by regular mail unless the applicant provides the written consent of the adjacent littoral owner ([Attachment 9](#)). Written consent is required if the proposed encroachment may infringe on the ten (10) foot setback from the littoral right line. If the applicant owns more than one lot, the owner of the next adjacent lot shall be notified ([IDAPA 20.03.04.025.03](#)).

#### Notification Timeframe

Adjacent littoral owner notification should be sent within five (5) days of accepting a complete encroachment application for processing. The adjacent littoral owners shall be allowed ten (10) days from receipt of notice to submit written comments and file an objection ([IDAPA 20.03.04.025.04.a](#)).

#### Objections and Mediation

When objections to applications (processed according to [Idaho Code 58-1305](#)) occur, Department staff are allowed to engage in informal mediation to resolve disputes. This process may result in changes to the permit application and the withdrawal of objections. A written withdrawal of objections shall be submitted to the Department and shall include the signatures of the applicant and objector and an outline of the acceptable changes made to the original application ([IDAPA 20.03.04.025.04.b](#)). The withdrawal of objections must be received within 30 days of the application date or a hearing will be scheduled.

#### Objections and Hearings

When informal mediation fails to resolve disputes, the Department shall proceed with the hearing process established in Idaho Code 58-1305 and [IDAPA 20.03.04.025.06](#).

#### Hearing Coordinator

Area staff shall contact the Operations Chief and request a hearing coordinator as soon as possible, preferably 30 days prior to the sixty (60) day deadline.

Department staff shall typically act as the Hearing Coordinator. The Hearing Coordinator may be an Area Manager, Operations Chief, Program Manager, Bureau Chief, Deputy Attorney General, or a contracted third party. The appearance of neutrality is important in selecting a Hearing

Coordinator, regardless of their position within the Department.

### **Hearing Schedule**

The Area shall fix a time and place for the hearing after coordinating acceptable schedules with the hearing coordinator, applicant, and the objecting party; however, the hearing shall be within sixty (60) days from the date of accepting the complete application for processing ([IDAPA 20.03.04.025.06](#)). The sixty (60) day deadline can only be extended with a written waiver from the applicant.

### **Hearing Attendees**

The applicant and any adjacent riparian owner who submitted timely objections can appear at the hearing personally or through a representative and present evidence. Department personnel, generally from the Area, may appear and present evidence. The Hearing Coordinator shall act as a fact finder not a party of the hearing ([IDAPA 20.03.04.025.06](#)).

### **Informal Disposition**

The parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order or other informal means ([IDAPA 20.03.04.025.06](#)).

### **No Publication**

No published notice of the hearing is necessary.

### **Pre-Hearing Requirements**

In preparation for the hearing, the Area office will provide the hearing coordinator with a copy of the following:

- Application;
- Adjacent littoral owner notification;
- Letters of objection; and
- Notice of Hearing.

### **Hearing Transcript**

The hearing shall be recorded and transcribed. The transcription shall include the certification language in [Attachment 10](#) (Idaho Rules of Civil Procedure, Subsection 84(g)).

### **Hearing Record**

The Area office will provide the hearing coordinator with a complete record, including the transcript, once the hearing is held and the comment period is closed.

### **Hearing Decision Preparation**

The Hearing Coordinator shall develop a decision document that includes a recommendation to the Director. The Hearing Coordinator will work with the Bureau and Legal Department on policy and legal issues.

The Hearing Coordinator will contact the Director upon completion of the hearing to identify a schedule which will allow a timely review by the Director.

The Hearing Coordinator will provide a copy of a draft decision document to the Legal Department for review prior to submission to the Director.

The Final Order shall be issued by the Director within forty-five (45) days following the hearing. A copy of the Final Order and the recommendation of the Hearing Coordinator shall be mailed to the applicant and the objectors attending the hearing ([IDAPA 20.03.04.025.07](#)).

### **Reconsideration Hearings**

Reconsideration hearings are not available for 58-1305 applications. Any applicant, or an aggrieved party appearing at a hearing, may seek judicial review upon objection to the Director's Final Order ([IDAPA 20.03.04.025.09](#)).

## **B. Idaho Code 58-1306 Permits (Generally commercial and community docks, and non-navigational encroachments)**

### **Agency/Neighbor Notification**

Copies of the required application shall be submitted to federal (e.g. U.S. Army Corps of Engineers), state (e.g. Departments of Fish and Game, Environmental Quality, and Water Resources), and local agencies (e.g. County Marine Deputy, Planning and Zoning authority, County Parks Department, Health District, Lake Commission, etc.) and identified interested parties (e.g. advocacy groups, homeowners associations, etc.) ([IDAPA 20.03.04.030.03](#)). Adjacent property owners should also be notified even if not required by rule or statute. [Attachment 11](#) has a list of the parties that are notified in each area. Areas with multiple and non-overlapping jurisdictions have parties that are notified when an application is within each party's jurisdiction.

The Agency Review and Notification of Application ([Attachment 12](#)) shall be sent within ten (10) days of accepting a complete encroachment application. Agencies shall have thirty (30) days from the first date of publication of the Notice of Application to respond ([IDAPA 20.03.04.030.04](#)).

### **Publication Requirements**

The application shall be published in the local newspaper as a legal advertisement within ten (10) days of accepting the application for processing. The publication shall run once a week for two (2) consecutive weeks ([IDAPA 20.03.04.030.01](#)). The Notice of Application ([Attachment 13](#)) comment period shall be thirty (30) days from the date of first publication ([IDAPA 20.03.04.030.04](#)).

**Publication Exemptions**

No publication is required for buried or submerged water intake lines and utility lines. Agency notification is still required ([IDAPA 20.03.04.030.01](#)).

**Hearing Initiated by Director**

The director may order a hearing on an application within ten (10) days of accepting a complete encroachment application ([IDAPA 20.03.04.030.01](#)). The director may order a hearing if requested by the applicant, when unusual circumstances exist, or when obvious public interest will likely result in a hearing. If this occurs, the area shall publish a combined Notice of Application ([Attachment 13](#)) and Notice of Hearing ([Attachment 14](#)). The hearing should be scheduled to fall on or after the thirty (30) day comment period. Publication and hearing details are given below.

**Objections and Hearings**

Any resident of the state of Idaho, or nonresident owner or lessee of real property adjacent to the lake where the proposed encroachment is located, shall have thirty (30) days from the date of first publication to file written objections, request a public hearing and pay the Notice of Hearing publication fee (see publication fees). The hearing must be specifically requested in writing or it will not be scheduled and noticed ([IDAPA 20.03.04.030.04](#)). This type of hearing is to allow the public an opportunity to offer comment, in written or oral testimony, concerning the proposed encroachment application.

Area staff shall contact the Operations Chief and request a hearing coordinator as soon as a hearing is requested.

**Publication**

If the Department receives a request for hearing, a time and place of the public hearing shall be published once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is to be located ([Attachment 14](#)) ([IDAPA 20.03.04.030.05](#)).

**Hearing Schedule**

The hearing shall be held within ninety (90) days from the date the application was accepted for filing ([IDAPA 20.03.04.030.05](#)).

**Public Comment Period**

The public comment period shall extend until the close of the hearing or thirty (30) days from the first date of publication of the Notice of Application, whichever is later. The hearing coordinator may extend the public comment period beyond that date, as necessary.

**Hearing Attendees**

Any person may appear at the public hearing and offer oral or written testimony ([IDAPA 20.03.04.030.06](#)). The hearing coordinator should limit testimony to issues relevant to the application.

<b>Hearing Coordinators</b>	Department staff shall typically act as the Hearing Coordinator. The Hearing Coordinator may be an Area Manager, Operations Chief, Program Manager, Bureau Chief, Deputy Attorney General, or a contracted third party. The appearance of neutrality is important in selecting a Hearing Coordinator, regardless of their position within the Department.
<b>Pre-Hearing Requirements</b>	<p>In preparation for the hearing, the Area office will provide the hearing coordinator with a copy of the following:</p> <ul style="list-style-type: none"> <li>▪ Application;</li> <li>▪ Notice of Application;</li> <li>▪ Dates of publication of the Notice of Application;</li> <li>▪ Letter requesting a hearing;</li> <li>▪ Notice of Hearing; and</li> <li>▪ Dates of publication of the Notice of Hearing.</li> </ul>
<b>Hearing Transcript</b>	The hearing shall be recorded and transcribed. The transcription shall include the certification language in <a href="#">Attachment 10</a> (Idaho Rules of Civil Procedure, Subsection 84(g)).
<b>Hearing Record</b>	The Area office will provide the hearing coordinator with a complete record, including the transcript, once the hearing is held and the comment period is closed.
<b>Hearing Decision Preparation</b>	<p>The Hearing Coordinator shall develop a decision document that includes a recommendation to the Director. The Hearing Coordinator will work with the Bureau and Legal Department on policy and legal issues.</p> <p>The Hearing Coordinator will contact the Director upon completion of the hearing to identify a schedule which will allow a timely review by the Director.</p> <p>The Hearing Coordinator will provide a copy of a draft decision document to the Legal Department for review prior to submission to the Director.</p> <p>The Final Order shall be issued by the Director within thirty (30) days following the hearing. A copy of the Final Order and the recommendation of the Hearing Coordinator shall be mailed to the applicant and the parties appearing and giving written or oral testimony (<a href="#">IDAPA 20.03.04.030.07</a>).</p>
<b>Judicial Review</b>	Any applicant, or an aggrieved party appearing at a hearing, may seek judicial review upon objection to the Director's Final Order ( <a href="#">IDAPA 20.03.04.030.09</a> ).

**Reconsideration Hearings**

A reconsideration hearing may only be held when a public hearing is not held and the applicant is dissatisfied with the Department's decision regarding an application. The applicant can request, in writing, a reconsideration hearing within twenty (20) days from the date of the Department's decision. The Department will set a time and place for reconsideration within thirty (30) days from receipt of request ([IDAPA 20.03.04.030.08](#)).

Area staff shall contact the Operations Chief and request a hearing coordinator as soon as possible.

**Reconsideration  
Hearing Coordinator**

Department staff shall typically act as the Hearing Coordinator. The Reconsideration Hearing Coordinator may be an Area Manager, Operations Chief, Program Manager, Bureau Chief, Deputy Attorney General, or a contracted third party. The appearance of neutrality is important in selecting a Reconsideration Hearing Coordinator, regardless of their position within the Department.

**Pre-Reconsideration  
Hearing Requirements**

In preparation for the hearing, the Area office will provide the hearing coordinator with a copy of the following:

- Application;
- Notice of Application;
- Dates of publication of the Notice of Application;
- Letter denying the application;
- Letter requesting reconsideration; and
- Hearing notification.

**Reconsideration  
Hearing Attendees**

The applicant or parties designated by the applicant may provide oral and written testimony at the reconsideration hearing ([IDAPA 20.03.04.030.08.b](#)).

**Reconsideration  
Hearing Transcript**

The hearing shall be recorded and transcribed. The transcription shall include the certification language in [Attachment 10](#) (Idaho Rules of Civil Procedure, Subsection 84(g)).

**Reconsideration  
Hearing Record**

The Area office will provide the hearing coordinator with a complete record, including the transcript, once the hearing is held and the comment period is closed.

**Reconsideration Hearing  
Decision Preparation**

The Hearing Coordinator shall develop a decision document that includes a recommendation to the Director. The Hearing Coordinator will work with the Bureau and Legal Staff on policy and legal issues.

The Hearing Coordinator will contact the Director upon completion of the hearing to identify a schedule which will allow a timely review by the Director.

The Hearing Coordinator will provide a copy of a draft decision document to the Legal Department for review prior to submission to the Director.

The Final Order shall be issued by the Director following the hearing (no deadline established in Code or Rules). A copy of the Final Order and the recommendation of the Hearing Coordinator shall be mailed to the applicant.

### **Judicial Review**

The applicant may seek judicial review upon objection to the Director's Final Order on Reconsideration ([IDAPA 20.03.04.030.09](#)).